

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: MATTHEW MARK HIGGINS,
AMY BETH HIGGINS,

Bankruptcy Case No.: **03-36033 DDO**
Chapter 7

Debtors.

CHARLES W. RIES, TRUSTEE,

Plaintiff,

v.

ROCHESTER MOTOR COMPANY,
dba ROCHESTER FORD, and
AFFINITY PLUS FEDERAL CREDIT UNION,

Adversary Case No.: **04-3247 DDO**

Defendant.

**DEFENDANT AFFINITY PLUS FEDERAL CREDIT UNION'S NOTICE OF MOTION
AND MOTION FOR SUMMARY JUDGMENT**

TO: CHARLES W. RIES, UNION SQUARE BUSINESS CENTER, SUITE 200, 201 NORTH BROAD STREET, POST OFFICE BOX 7, MANKATO, MINNESOTA 56002-0007, TRUSTEE AND PLAINTIFF, THROUGH HIS ATTORNEY, CHARLES W. RIES, ESQ., UNION SQUARE BUSINESS CENTER, SUITE 200, 201 NORTH BROAD STREET, POST OFFICE BOX 7, MANKATO, MINNESOTA 56002-0007, PURSUANT TO RULE 7004(b)(9).

I. Notice of Motion

PLEASE TAKE NOTICE that on **September 22, 2004**, at **11:15 a.m.**, at United States Bankruptcy Court, United States Courthouse Room 228A, 316 North Robert Street, Saint Paul, Minnesota, 55101, the undersigned counsel for Defendant Affinity Plus Federal Credit Union will move the Court for summary judgment.

Any response to this motion must be filed and delivered not later than September 15,

2004, which is 7 days before the date of the hearing (including Saturdays, Sundays and holidays), or filed and served by mail not later than September 8, 2004, which is 10 days before the date of the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334. This proceeding is a core proceeding. The motion arises under Bankruptcy Rule 7056 and Fed. R. Civ.Proc. 56. Defendant Affinity Plus Federal Credit Union seeks summary judgment against the Plaintiff as to all Counts of the Complaint in this matter.

Defendant Affinity Plus Federal Credit Union bases its motion upon the Memorandum in Support Defendant Affinity Plus Federal Credit Union's Motion for Summary Judgment, the Affidavit of Jodi Schramel, the Affidavit of Derrick N. Weber and the Exhibits attached thereto, and all the files herein.

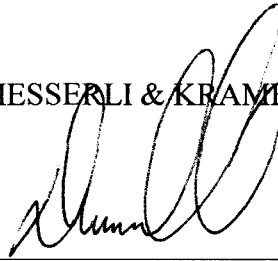
II. Motion For Summary Judgment

Defendant Affinity Plus Federal Credit Union hereby moves the Court for relief as follows:

1. For an Order for Summary Judgment, pursuant to Federal Bankruptcy Rule 7056;
2. An award of judgment against Plaintiff for attorneys fees, distributions and costs incurred by Defendant Affinity Plus Federal Credit Union's in its defense of this matter; and
2. For such other relief as the court deems just and equitable.

Dated: August 26, 2004

MESSERLI & KRAMER, P.A.

A handwritten signature in black ink, appearing to read 'D. Weber', is written over the firm name.

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ATTORNEY FOR DEFENDANT
AFFINITY PLUS FEDERAL CREDIT
UNION